82-1937

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

AMADOR RODRIGUEZ-RAMOS,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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QUESTIONS PRESENTED

Did the United States Court of Appeals for the First Circuit err when it dismissed the Petitioner's, Amador Rodriguez-Ramos', appeal from a jury verdict and judgment entered in a conspiracy case brought under 21 U.S.C. Sec. 841(a)(1) and 846 when the Petitioner alleged constitutional violations of his right to counsel, of his right to be free from unreasonable searches and seizures and of his due process rights?

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AMADOR RODRIGUEZ-RAMOS,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Amador Rodriguez-Ramos hereby petitions that a writ of certiorari be issued to review the judgment and opinion of The United States Court of Appeals for the First Circuit entered on April 1, 1983.

OPINION BELOW

The judgment and opinion of The United States Court of Appeals for the First Circuit was entered on April 1, 1982 (No. 82-1128). The opinion is attached hereto as Appendix 1.

JURISDICTION

The judgment of The United States Court of Appeals for the First Circuit (App. 1) was entered on April 1, 1983, affirming the Petitioner's conviction dated January 21, 1982. The jurisdiction of the court is invoked under and pursuant to 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitution of The United States, Amendment V, which provides in pertinent part:

> "No person shall . . . be deprived of life, liberty or property, without due process of law . . ."

Section 841(a)(1) of Title 21 U.S.C. provides:

> "(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—
>
> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or
>
> (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance".

Section 346 of Title 21 U.S.C. provides:

> "Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy".

STATEMENT OF THE CASE

This is an appeal from a conviction for conspiracy to violate the federal narcotics control laws. The appellant was charged along with Freddie Mercado and John Doe, a/k/a Israel, in a one count indictment with conspiracy to possess with intent to distribute cocaine in violation of Title 21 U.S.C. Sec. 841(a)(1) and 846.

The appellant was arrested on September 17, 1981 in Ft. Lauderdale, Florida. After posting bond and waiving a removal hearing, the defendant was ordered to appear in San Juan, Puerto Rico on October 29, 1981. Indicted co-defendant, Freddie Mercado was arrested in Arecibo, Puerto Rico on the same day. John Doe, a/k/a Israel, was never arrested and did not appear at trial.

The case was assigned to Judge Carmen Cerezo for trial and on motion of appellant the arraignment was reset for November 10, 1981. (R-1). At a pretrial conference, the trial court set a trial date of December 21, 1981. (R-5). Without any notice to the parties, the case was transferred to Judge Jose Torruella on December 4, 1981, (R-2) who advanced the trial date to December 14, 1981. Attorneys for appellant learned of the advancement of the case for trial on December 7, 1981. Appellant immediately filed a motion to continue the trial date, but that motion was denied on December 10, 1981. (R-6). On December 14, 1981 lead counsel, Michael J. Guinan, and local counsel, Scott Kalisch, could not be present due to trial commitments in other courtrooms. Over objections of appellant that his attorneys did not have sufficient time to prepare for trial and that the attorney of his choice was not present, the appellant was ordered to trial. When Judge Jose Torruella threatened to revoke bond if

appellant did not start the trial, the appellant agreed to start the trial represented by co-counsel, Alphonse C. Gonzales. Gonzales was recently retired from public office, had no trial experience and was hired solely to aid the lead counsel in communication problems with the Spanish speaking appellant.

The trial commenced on December 15, 1981. Co-defendant, Israel, was a fugitive and was not present for trial. Defendant, Freddie Mercado, was found not guilty by the jury and discharged. On December 20, 1981 a jury verdict of guilty was returned against the appellant, Amador Rodriguez.

On December 28, 1982 appellant filed motions for a new trial and judgment notwithstanding the verdict. The court denied all post-trial motions, and on January 21, 1982 sentenced the appellant to ten (10) years in the custody of the U.S. Attorney General. Appellant filed notice of appeal on January 27, 1982. The First Circuit affirmed the petitioner's conviction on April 1, 1983.

STATEMENT OF FACTS

On August 17, 1982 Appellant, Amador Rodriguez, was arrested by U.S. Drug Enforcement agents in the parking lot of the Fort Lauderdale airport. He had just traveled by commercial airline from Chicago, Illinois with a female companion, Iris Ruiz. The appellant was met in the airport terminal as he deplaned by DEA undercover agent Jorge, and was taken to a car where he was shown a cardboard box that contained sham cocaine. As the appellant and agent Jorge stood at the open trunk

of the car allegedly looking at a substance that resembled cocaine, an arrest signal was given.

The appellant was charged with conspiring with two others to buy the sham cocaine by agreeing to give a deed to a house he owned in Arecibo, Puerto Rico. (T-310).

During the trial, a paid informer and two drug agents testified to the development of the sting operation. Jose Roman Velez, a paid government informant since January, 1980, testified he had been a neighbor of co-defendant, Freddie Mercado, in Arecibo, Puerto Rico for five years, and learned through him that Mercado's cousin, the appellant, was in the process of selling a house located in Arecibo for $150,000.00. (T-68-76). The informant, a/k/a Tito, was instructed by agent Jorge to set up a meeting between Mercado and drug agents. (T-99).

The first meeting concerning the sale of appellant's house was held between the informant, Mercado and drug agents Jorge and Fernandez in Arecibo, Puerto Rico on December 12, 1980. There was no conversation concerning the transfer of the house for drugs at this meeting. The drug agents were then taken to the house and shown through it. During the tour there was conversation concerning controlled substances, but no conversation about exchanging drugs for the house. (T-335-378). Co-defendant Mercado wanted to help sell the house because he was promised a commission if his help resulted in a sale. (T-382).

In January, 1981, appellant arrived in Puerto Rico, and when agent Jorge was informed of this, he ordered Tito to set up a meeting with the appellant. On January 5, 1981 a meeting was held between appellant, co-defendants Mercado and Israel, Tito, and drug agents Jorge and Fernandez. Agents Jorge and Fernandez testified

that the appellant was interested in accepting money or drugs in exchange for his house that was valued at $150,000.00. (T-119-143).

Subsequent to the meeting, Tito learned that the appellant was leaving Puerto Rico and reported this information to agent Jorge. Tito was instructed to set up another meeting. On January 8, 1981, agent Jorge met appellant and co-defendant Israel at the airport in Arecibo, and during that meeting the appellant told Israel to give agent Jorge a sample of cocaine. (T-181). After appellant left, Israel took agent Jorge to his car in the parking lot where he gave him a small quantity of cocaine. (T-182).

Both meetings, January 5, 1981 and January 8, 1981 between the appellant and drug agents were conceived and solicited by the drug agents, and the conversations concerning the sale of the house for drugs were always instigated and prodded on by the drug agents. (T-140-276).

After leaving the airport in Arecibo, the appellant returned to Chicago, Illinois where he resided with his wife and family. Neither the appellant nor co-defendant Mercado made any effort to contact the drug agents again. (T-144-288). However, the drug agents began a series of telephone calls from San Juan to Chicago and relentlessly and persistently badgered the appellant to sell his house for drugs. (T-120). From January 8, 1981 to August 17, 1981, the agents called the appellant five times; four of the five telephone calls were recorded. (T-146).

Agent Fernandez testified that he placed a telephone call to Chicago on August 10, 1981 and that he discussed heroin and cocaine, but Fernandez was not certain he spoke with the appellant. (T-138). This call was not recorded due to a recorder malfunction. During the

September 3, 1981 recorded telephone conversation, appellant agreed to travel to Fort Lauderdale to meet the drug agents and discuss selling his house for drugs. (T-138-145).

On September 17, 1981, when appellant and Iris Ruiz arrived at the Fort Lauderdale airport terminal, the appellant handed his travel bag to Ms. Ruiz so that he could carry a large blue suitcase that had been checked with the airlines in Chicago. (T-315). Agent Jorge had met the appellant and Ms. Ruiz as they deplaned and while waiting for the suitcase at the baggage claim area, the appellant told agent Jorge that he had the house deed with him. (T-261 and 318). As they walked from the terminal, Ms. Ruiz carried appellant's travel bag and appellant carried the large blue suitcase. (T-306 and 315). Agent Jorge led them to the car that had been planted by the DEA agents with a cardboard box containing three kilograms of "sham cocaine." (T-226). At the car, agent Jorge opened the trunk and showed Rodriguez-Ramos the box. Rodriguez-Ramos raised his arms and asked if agent Jorge was "crazy". (T-263). Agent Jorge then moved the box which was the signal for the other agents to move in for the arrests. The agents moved in quickly as appellant stood with his arms raised, arrested the appellant and Ruiz and seized the two pieces of luggage. (T-312). The travel bag was taken to DEA headquarters in Fort Lauderdale and opened without a search warrant. The agents opened a sealed envelope found inside the travel bag and found a deed to the appellant's house in Arecibo, Puerto Rico. (T-308-324). The appellant filed a motion to suppress the admission of the deed into evidence. The trial court denied the motion and admitted the deed into evidence.

REASONS FOR GRANTING THE WRIT

I.

THE TRIAL COURT VIOLATED APPELLANT'S CONSTITUTIONAL RIGHTS BY DENYING HIS REQUEST FOR CONTINUANCE AND THE DENIAL CAUSED HIM TO BE INADEQUATELY REPRESENTED AT TRIAL.

In all criminal prosecutions the accused shall enjoy the right to have assistance of counsel for his defense. United States Constitution Amendment VI. The Sixth Amendment guarantees that a person brought to trial in any Federal Court be offered the right to assistance of counsel before he can be validly convicted. *United States v. Burton*, 384 F.2d 485 (D. of C. Cir. 1978). The importance of counsel's function to the effective operation of our adversary system is unquestioned. *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942).

An essential element of the Sixth Amendment's protection of the right to the assistance of counsel is that a defendant must be afforded a reasonable opportunity to secure counsel of his own choosing. *Powell v. Alabama*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). The Supreme Court has held on numerous occasions that:

> "it is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice."

Crooker v. California, 357 U.S. 433, 78 S.Ct. 1287, 2 L.Ed.2d 1448 (1958); *Chandler v. Fretag*, 348 U.S. 3, 75 S.Ct. 1, 99, L.Ed. 4 (1954); *Powell, supra.*

The appellant concedes that the right to retain counsel of one's own choice is not absolute. The right cannot be insisted upon in a manner that would obstruct an orderly

procedure in courts of justice, and deprive such courts of the exercise of their inherent powers to control the same. *Gandy v. Alabama*, 569 F.2d 1318 (5th Cir. 1978); *United States v. Poulack*, 556 F.2d 83 (1st Cir.), *cert. denied*, 434 U.S. 986, 98 S.Ct. 613, 54 L.Ed.2d 480 (1977).

It is axiomatic that the district court has the inherent power to control its own docket to ensure that cases proceed before it in a timely and orderly fashion. The power to grant or deny a continuance is a basic tool which is committed to the discretion of the trial court to effectuate this purpose. *United States v. Correia*, 531 F.2d 1095 (1st Cir. 1976).

This discretion in controlling its own docket gives the trial court the power to set cases for trial and to grant or deny continuances. The court's power is such due to the public's strong interest in the prompt, effective and efficient administration of justice. The public's interest in the dispensation of justice that is not unreasonably delayed is great. *Burton, supra.* There are no mechanical tests for deciding when a denial of a continuance is an abuse of discretion. Each case must be evaluated on its own facts. *Poulack, supra*; *United States v. Waltham*, 579 F.2d 64 (1st Cir. 1978).

When a continuance is sought to replace or retain counsel the defendant's Sixth Amendment rights to assistance of counsel is implicated. The right of choice of counsel is related to the right to adequate time to prepare for trial. While counsel is not entitled to unlimited preparation time, he is entitled to reasonable preparation time. The question of reasonable preparation time is closely related to the issue of inadequate assistance of counsel. If preparation time is unreasonably short, counsel cannot competently represent his client, and may make negligent

omissions or acts that deprive the defendant of his constitutional right to assistance of counsel for his defense. *Burton, supra.*

The question of a reasonable delay depends on the circumstances of each case. Factors to be considered by the trial court are:

1. Whether other continuances have been granted or requested; *United States v. Brown,* 495 F.2d 593 (1st Cir. 1974);
2. The balanced convenience or inconvenience to the litigants, witnesses, counsel, and the court; *Brown, supra*;
3. Whether the delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; *United States v. Dilworth,* 524 F.2d 470 (5th Cir. 1975); *United States v. Rodriguez-Vallejo,* 496 F.2d 960 (4th Cir. 1974);
4. Whether the defendant contributed to the circumstances which gave rise to the request for continuance; *Rodriguez-Vallejo, supra, Lee v. United States,* 98 U.S. App. D.C. 274 (1956);
5. Whether the defendant has other competent counsel prepared to try the case including the consideration of whether other counsel was retained as lead or associate counsel; *Brown, supra*;
6. The complexity of the case; *United States v. Mitchell,* 354 F.2d 767 (2d Cir. 1966).

In the instant case, Judge Cerezo, set a December 21, 1981 trial date on November 30, 1981. (R-24). On December 4, 1981 the case was transferred without reason to Judge Torruella's docket. (R-25). On December 4, 1981, Judge Torruella advanced the trial to December 14, 1981. The appellant filed for a continuance upon receiving notification of the transfer of case and change of trial date upon the court's own motion. (Appendix 16-19) The

appellant was out on bond and had been arraigned on November 10, 1981 only 34 days prior to the trial date. (R-17).

The appellant also filed a second motion for a continuance on December 14, 1981. (R-26). The motion included the appellant's affidavit which requested Mr. Michael J. Guinan to represent him at trial. The motion and affidavit set out the basis for the continuance and the circumstances surrounding the multiple counsel representing the appellant in the case.

The appellant had retained Mr. Michael J. Guinan as lead counsel at trial. Mr. Alphonse Gonzales had been retained to aid Mr. Guinan with his communication difficulties with the Spanish speaking appellant. Mr. Scott Kalisch was retained as local counsel solely to comply with the Federal Rules of Procedure for District of Puerto Rico.

On December 14, 1981, Mr. Kalisch was on trial in another case. Mr. Guinan was in Los Angeles litigating a different case. Mr. Gonzales, an attorney who was recently retired from public office and had no trial experience went to Puerto Rico to seek a continuance for the defendant. The court ordered Mr. Gonzales to begin trial for the appellant.

The government argues that the appellant agreed to have Mr. Alphonse C. Gonzales, argue pretrial motions. It is true that the appellant agreed to have Mr. Gonzales argue his pretrial motions, but he only did so after the trial judge threatened to revoke his bond and incarcerate him if he did not begin trial with Mr. Gonzales as his attorney.

Unfortunately, the transcript which contains this portion of the trial apparently does not exist. The appellant

requested all portions of the transcript relating to the pretrial motions be prepared for his appeal, on February 1, 1982. (R-80). Despite numerous telephone calls and letters to the court reporter the transcript has mysteriously never been prepared.

A review of the transcript in this case shows errors made by Mr. Gonzales, but also raises the question of the accuracy of the transcript itself. According to the transcript, Mr. Maldonado (who represented a co-defendant at trial) made a motion "on behalf of his client, Amador Rodriguez", the appellant in this case. (T-60). Later in the trial Mr. Maldonado apparently raised another motion on behalf of Rodriguez, who he did not represent at trial. (T-64).

Apparently, Mr. Gonzales did have some difficulty in making objections at trial. On numerous occasions the trial judge informed him to make proper objections, once even holding a side bar on the issue. (T-68, 69, 93). This is not the type of conduct that gives rise to adequate representation of a client.

More is involved in this case than some mistakes by an inexperienced attorney. A question of reasonable preparation time for the appellant's lead counsel is also involved. Mr. Guinan, the lead counsel was litigating a case in Los Angeles on December 14, 1981. He was forced to fly all night and begin trial on December 15, 1981.

The lack of reasonable preparation time is readily apparent from these facts. If preparation time is unreasonably short, counsel cannot competently represent his client, and may make negligent omissions or acts that deprive the defendant of his constitutional right to assistance of counsel for his defense. *United States v. Burton*, 384 F.2d 485 (D. of C. Cir. 1978).

In reviewing the trial judge's activities in this case, the court should look to the case of *United States v. Lespier*, 558 F.2d 624 (1st Cir. 1977) for guidance. The *Lespier* case had been pending on the court's docket for over three years. The charges were for misdemeanor assault. A September trial date was set on April 1, 1975. Yet, counsel for defendant filed a motion for a continuance in order to attend a political seminar. The motion for a continuance was denied and an inexperienced associate attorney was forced to trial. This court reversed and remanded the *Lespier* case for a new trial because of the above stated facts.

Certainly, the situation in the instant case deals with a much harsher set of facts. Additional consideration should be given to the fact that the appellant only sought a court order returning this case to the original trial date of December 21, 1981. This would have given appellant's lead counsel time to prepare for the trial. The trial judge never considered this factor and never inquired as to the probable length of the unavailability of the appellant's counsel of choice. The failure to make such an inquiry was held to violate the Sixth Amendment's right to counsel in *Slappy v. Morris*, 649 F.2d 718 (9th Cir. 1981).

This was a felony case of great magnitude involving a novel theory of law enforcement tactics. The case had only been pending on the criminal docket for a short time. The appellant was out on bail. An obvious legitimate reason existed for the trial court to grant a short continuance, especially in light of the fact that it advanced trial one week prior to the litigation commencing.

When all the factors are considered by this court there can be no doubt that the trial judge abused his discretion when he denied appellant's request for a continuance and that said denial was a violation of appellant's Sixth

Amendment rights to effective counsel as well as Fifth Amendment due process rights because his counsel could not properly defend him at trial. This violation of rights mandates a reversal of defendant's conviction.

II.

THE TRIAL COURT ERROR IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE WAS A VIOLATION OF HIS FOURTH AMENDMENT CONSTITUTIONAL RIGHTS.

In order to challenge on Fourth Amendment grounds the introduction of evidence at one's trial, that person must demonstrate a legitimate expectation of privacy in the area searched. *United States v. Salvucci*, 448 U.S. 83, 92, 100 S.Ct. 2547, 65 L.Ed.2d 619 (1980).

The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search and seizure. *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978); *Simmons v. United States*, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968).

The trial court must consider a number of factors to determine if a defendant can establish the standing prerequisite before deciding if an illegal search took place. Ownership alone is not enough to establish a reasonable and legitimate expectation of privacy. *Rakas, supra*; *Brown v. United States*, 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973). It is the totality of the circumstances which determines whether one has a legitimate expectation of privacy in the locus of the search. *Rawlings v. Kentucky*, 448 U.S. 98, 100 S.Ct. 2565, 65 L.Ed.2d 633 (1940); *United States v. Dall*, 608 F.2d 910 (1st Cir. 1979).

When looking at the totality of the circumstances, the court must look to the area searched and the type of item searched. As the Supreme Court held in *Arkansas v. Sanders*, 422 U.S. 753, 99 S.Ct. 2586, 61 L.Ed. 235 (1979):

> "The guarantee of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of government, as recognizing the difference between the search of a store, dwelling house or other structure in respect of which a proper official warrant may be readily obtained, and a search of a ship, boat, automobile . . ."

The difference between warrantless searches of automobiles and other types of private property lies in the inherent mobility of automobiles, *United States v. Chadwick*, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977), and the lack of reasonable expectation of privacy with respect to such property. *Rakas, supra.*

Luggage on the other hand has traditionally received the same warrant protections that homes have received. The Supreme Court has recognized that luggage is a common repository for one's personal effects, and therefore is inevitably associated with the expectations of privacy. *Arkansas v. Sanders, supra.* The critical factor relied on in *Arkansas v. Sanders* was the objective nature of the suitcase as personal luggage, i.e. the inherent nature of the container itself rather than the behavior of its owner. *United States v. Cleary*, 656 F.2d 1327 (9th Cir. 1982). A lawful search of luggage may be performed only pursuant to a warrant. *Chadwick, supra.*

In this case a travel bag was seized from the appellant at the time of his arrest. The bag was being carried by his female companion. A warrantless search of the bag turned up the deed to a house which the government sought to introduce as evidence at trial. The trial court

denied appellant's motion to suppress the evidence seized, holding that he did not establish standing because the travel bag was being carried by another person. The government then introduced the deed as evidence of the conspiracy at trial.

Unrebutted evidence was presented by the appellant which showed the bag contained several of his personal items, his money, and an envelope containing the deed to his house. The appellant also testified that the female was carrying his light travel bag, while he carried her heavier suitcase. The appellant did not deny ownership of the travel bag at the time of his arrest. Clearly, the appellant presented prima facie evidence that he had a legitimate expectation of privacy in the travel bag and its contents.

When the travel bag was seized, no evidence and/or probable cause existed to believe that the luggage contained contraband. As in *Chadwick, supra,* and *Sanders, supra,* the officers had the luggage exclusively within their control at the time of search. No exigent circumstances existed in this case yet, the law enforcement authorities conducted a warrantless search of the luggage after it was under their complete control. There can be no question the search violated the Fourth Amendment of the United States Constitution.

Additionally, the evidence adduced at the hearing on the motion to suppress showed appellant's deed to a house was contained in a sealed envelope in the luggage that was searched. Even if this court were to find that the appellant had no expectation of privacy in the travel bag, he clearly has an expectation of privacy in an envelope that contains the deed to his house. No exigent circumstance existed which would have allowed the law enforcement officials to search the envelope without a war-

rant. Therefore, the warrantless search of the envelope which contained the deed violated the appellant's Fourth Amendment freedoms.

By allowing the two warrantless searches the trial court abrogated the appellant's constitutional right to be free from unreasonable searches and seizures. The drug agents clearly exceeded their powers by unreasonably searching both the appellant's luggage and envelope when they could have easily obtained a warrant.

III.

THE UNREASONABLE COURTSHIP OF THE APPELLANT BY GOVERNMENT AGENTS VIOLATES FUNDAMENTAL FAIRNESS AND DUE PROCESS PRINCIPLES OF THE FOURTH AMENDMENT.

The rash of drug cases over the last decade have caused the courts to focus on virtually novel defenses, that if successfully raised, bar a conviction. These defenses allege, in essence, that the crime charged would not have been committed except for the unreasonable conduct of the arresting law officers. In the instant case, the conduct of the drug agents did not constitute "entrapment" nor "outrageous police conduct", but did violate the "fundamental fairness" principal of due process.

Entrapment, which has been defined as the conception and planning of an offense by an officer of the law and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion and fraud of the officer. *Sorrells v. United States*, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413 (1932). If a defendant is induced by government agents to engage in a prescribed activity, no conviction may be had against him. *Sherman v. United States*, 356 U.S. 369, 78 S.Ct. 819, 2 L.Ed. 848 (1958).

Since *United States v. Russell*, 411 U.S. 423, 93 S.Ct. 1637, 36 L.Ed. 366 (1973), the defense of entrapment has focused on the predisposition of the defendant. Where the subjective mental state of predisposition existed at the time of the crime's occurrence no entrapment defense can exist.

The defense of entrapment must be raised by the defendant, and he must take the stand at trial and admit to doing the acts alleged in the indictment. The issue of entrapment then becomes a fact question for the jury to resolve. *Olson v. United States*, 388 U.S. 323, 87 S.Ct. 429, 17 L.Ed. 394 (1966).

Another defense is outrageous police conduct. This conduct can bar a conviction even though the defendant had a predisposition to commit a crime, if the over-involvement of the police officers reached a demonstrable level of outrageousness. *Hampton v. United States*, 425 U.S. 484, 96 S.Ct. 1646, 48 L.Ed.2d 113 (1978). The defense of outrageous government conduct is a question of law. The defense arises when the court is presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles are violated, and this conduct would absolutely bar the government from invoking the judicial process to obtain a conviction. *Russell, supra.*

This case is neither one of entrapment nor outrageous police conduct. The unreasonable courtship of the appellant by government agents falls somewhere in between the two recognized defenses.

A review of the facts in a light most favorable to the government could indicate that the appellant had the predisposition to violate federal narcotics laws. Therefore, the defense of entrapment should be ruled out by

this court. The conduct of drug agents in the instant case was not outrageous, as in *Hampton, supra.* In fact, the government used a well planned sting operation to involve the appellant in the crime.

The evidence adduced at trial showed that the two meetings between drug agents and the appellant as well as the five telephone conversations between the parties were instigated and prodded on by the drug agents. (T-140-276). The appellant never called the drug agents or contacted them to set up a meeting. Without the illicit courtship of the government agents over a nine month period of time, no crime would have occurred.

The unreasonableness of a conviction based on the instant set of facts violates the fundamental fairness and the due process principles of the Fourth Amendment of the United States Constitution.

The ease with which a modern day conspiracy charge can be proven spotlights the inherent danger in allowing unreasonable police conduct. "The looseness and pliability of the (conspiracy) doctrine present inherent dangers which should be in the background of judicial thought whenever it is sought to extend the doctrine to meet the exigencies of a particular case." *Krulewitch v. United States,* 336 U.S. 440, 69 S.Ct. 716, 93 L.Ed. 790 (1949) (concurring opinion).

One of the major factors contributing to these dangers is the fact that the conspiracy charge has become the "darling of the modern prosecutor's nursery" and that defendants charged with such a crime can be easily convicted even if innocent. *Harrison v. United States,* 7 F.2d 259, 263 (2nd Cir. 1925) (L. Hand, J.). Additionally, the courts have now held that conspiracy indictments brought under 21 U.S.C. Sec. 846 do not require proof of

an overt act. *United States v. Rodriguez*, 612 F.2d 906 (5th Cir. 1980).

Due to the related burden the government must meet to prove an agreement between individuals as an element of conspiracy, it should not be allowed to take affirmative steps to cause that agreement to come about. In the instant case no crime would have occurred without the plan being conceived by the drug agents and persistent pursuit of the appellant by the drug agents who were bent on inculpating the appellant in a crime.

The fact that the drug agents actions violated constitutional provisions of fundamental fairness and reasonableness make the issue one of law rather than fact. In this respect the facts in the instant case are more like outrageous conduct than entrapment. The unreasonableness of the drug agents conduct should obviate the need of the appellant to plead and prove "unreasonable courtship" as a defense.

The "unreasonable courtship" by the government agents and resulting denial of due process mandates reversal of the conviction of the appellant.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

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APPENDIX 1

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 82-1128

UNITED STATES OF AMERICA,
Appellee,
v.
AMADOR RODRIGUEZ-RAMOS,
Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Juan R. Torruella, *U.S. District Judge*]

Before
Coffin, *Chief Judge*,
CAMPBELL and BOWNES, *Circuit Judges*.

Michael J. Guinan, with whom *George E. Becker*, and *Alphonse C. Gonzales* were on brief, for appellant.

Everett M. De Jesus, Assistant United States Attorney, with whom *Daniel Lopez Romo*, United States Attorney, was on brief, for appellee.

April 1, 1983

COFFIN, *Chief Judge*. Appellant, Amador Rodriguez-Ramos, was convicted of conspiracy to possess with the intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a) and 846. He argues four bases for reversal: (1) the district court violated his Sixth Amendment right to assistance of counsel when it denied his request for a continuance; (2) it erred in denying his motion to suppress certain evidence; (3) it erred when it denied appellant's motion to dismiss the indictment as based on improper grand jury testimony; and (4) "unreasonable courtship" by government agents violated his Fifth Amendment rights to due process and fundamental fairness. We affirm the conviction.

I. *Request for a Continuance*

At a November 2, 1981 status conference appellant's trial was set for December 8, 1981 with a pretrial conference on November 30, 1981. On November 12 appellant filed a motion to continue the trial date, alleging that discovery had not been completed, thus delaying the preparation of pretrial motions, and that lead counsel for appellant was expected to be in trial on December 8 in Brownsville, Texas. Appellant further alleged in that motion that postponement of the trial would "create no difficulty under provisions of the Speedy Trial Act." The motion was granted on November 24, the court noting that "[t]he prior setting of this case conflicts with two other criminal cases set for December 9 and 10, 1981 before the undersigned"; the trial date was reset for December 21, 1981.

Appellant's case was subsequently transferred to another judge who, on December 4, reset the case for trial on December 14, 1981. According to an affidavit of one of appellant's counsel, his office received notice of the transfer of the case and the change of trial date on the previous afternoon, December 3. Appellant's counsel aver on appeal, however, that they did not learn personally of the advancement of the trial date until December 7.

On December 8 appellant filed a "motion to modify the trial date" which was signed by his local Puerto Rico counsel, averring that his local counsel was scheduled to begin trial in another case on the same date, that appellant's lead counsel was scheduled to appear on December 14 at a suppression hearing in Los Angeles, and that a third, associate, counsel did not have the necessary experience to try the case. That motion requested that the trial be put off until December 16 or, alternatively, that jury selection begin on December 15 but that the trial thereafter not be resumed until December 16. That motion was denied in a handwritten order at its foot.

> "Denied. This is a criminal trial in which the Speed [sic] Trial Act date is about to expire and this takes precedence over all matters. Considering that at least one of defendant's multiple counsel are available for trial on December 14, 1981, that trial setting stands firm."

On December 10 appellant also filed a "motion for continuance", which was signed by his lead counsel, requesting "a continuance in this cause [sic] because his attorney will be involved with another case on the trial date set by this court and to order Defendant to go to trial on that date or any date before December 21, 1981 would violate his due process rights because his attorney will not be adequately prepared for his defense." We find no indication in the record of separate action by the court on that motion.

On December 14 the case was called for trial. Appellant's associate counsel appeared on his behalf and renewed his motion for a continuance. The court put off selection of a jury and commencement of trial to the following day, but heard argument on pending pretrial motions. The trial commenced the following day with appellant's lead counsel, associate counsel, and local counsel all present. Lead counsel reiterated that he was not prepared for the case.[1]

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[1] Appellant's motion for a continuance was joined at that time by his codefendant.

Appellant argues that the trial court abused its discretion in denying his request for a continuance, thus unconstitutionally burdening his right to representation by counsel. Though appellant's request for a continuance appears to have had sufficient merit to warrant the trial judge's reasonable scrutiny, and though the trial judge's stated reason for denying the motion may have been in error, any burden on appellant's right to counsel did not reach constitutional dimensions.

In denying appellant's motion to modify the trial date, the trial judge indicated that "the Speed [sic] Trial Act date is about to expire and this takes precedence over all matters." Since appellant was not arraigned until November 10, only 35 days before the scheduled trial date, the requirements of the Speedy Trial Act would not appear to have been pressing. *See* 18 U.S.C. § 1361.[2] In addition, delay resulting from a continuance when the court finds "that then ends of justice served by such action outweigh the best interest of the public and the defendant in a speedy trial", is excludable from the time requirements of the Act. 18 U.S.C. § 1361(h)(8)(A).

Nonetheless, we find that any burden on appellant's right to representation by counsel resulting from the

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[2] Appellant's codefendant was arraigned at an earlier date—October 1. But any time problem with respect to him would seem to be cured by 18 U.S.C. § 3161(h)(7), which excludes "[a] reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and no motion for severance has been granted." Indeed, the codefendant, at the commencement of trial on December 15, joined appellant's motion for continuance, pleading lack of adequate preparation time.

Despite his several motions for continuance and his affirmations in so moving that continuance would create no Speedy Trial Act problems, appellant, with formidable temerity, filed a written motion on December 17, the third day of trial, moving for dismissal of the indictment on the grounds that the Speedy Trial Act had been violated. That motion was denied without comment. That denial has not been appealed.

denial of his motion for a continuance was minimal. Trial in the case was originally set for December 8. Appellant was represented by three attorneys. Appellant's lead counsel and associate counsel filed a notice of appearance on November 12. He was also represented prior to that time and throughout by local counsel. Open file discovery was given in the case, and full disclosure had been made to appellant by November 30. Appellant's associate counsel was present on December 14 to argue pretrial motions. All three of appellant's counsel were present on December 15 when jury selection and trial began and for the remainder of the trial.

Appellant argues that his rights were prejudiced by having only inexperienced counsel present to argue pretrial motions and because his lead counsel did not have adequate time to prepare for trial. He does not, however, point to specific ways in which his defense might have been improved by more time or the presence of lead counsel at argument on pretrial motions. *See United States v. Waldman*, 579 F.2d 649, 653 (1st Cir. 1978).

In extreme circumstances it can be assumed that a combination of inadequate time to prepare and inexperienced counsel will result in ineffective assistance. We found such circumstances in *Rastrom v. Robbins*, 440 F.2d 1251 (1st Cir.), *cert. denied*, 404 U.S. 863 (1971), when counsel without prior trial experience was called upon to begin trial in four hours. There are no such extreme circumstances here.[3]

Appellant's "motion to modify trial date"—made by experienced, local counsel—asked that the trial begin on

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[3] Appellant's reliance on *United States v. Lespier*, 558 F.2d 624 (1st Cir. 1977), is misplaced. In that case the associate counsel's "refusal to undertake the most ordinary tasks of advocacy" at trial "left the defendants without even the pretense of a competent defense." 558 F.2d at 629. Here, as we have noted, any impact on the defense was much less severe.

December 16 in order that appellant's lead counsel could return from Los Angeles. Lead counsel was in fact present on December 15. Only jury selection and opening arguments took place on that day. It is true that appellant's concurrent "motion for continuance"—made by lead counsel—asked for a continuance to December 21 in order to allow adequate preparation time. But we cannot say, in the face of such contradictory motions from multiple counsel, that the trial judge erred either in not responding to that motion or in concluding that appellant would be adequately represented on the scheduled trial date.

In addition, there is no indication in the record that appellant was not adequately represented by associate counsel at argument on pretrial motions. On the motion perhaps most crucial to appellant's defense (and which is made a subject of this appeal), his motion for suppression of evidence, the trial judge reserved his ruling and allowed for further testimony and argument, which was conducted by appellant's lead counsel on the third day of trial.

We conclude that the court's denial of appellant's motion for continuance of the trial date did not violate his Sixth Amendment right to counsel.

II. *Motion for Suppression*

The prosecution presented evidence at appellant's trial to show that appellant conspired to exchange a house that he owned in Puerto Rico for a quantity of cocaine which he intended to distribute. It introduced a deed to appellant's house which appellant allegedly brought to a meeting with undercover drug agents and intended to exchange for cocaine.

That deed was discovered through the warrantless search of a travel bag which was carried by appellant's female companion at the time of his arrest. Finding that the travel bag belonged to appellant's traveling compan-

ion, the trial court ruled that appellant had no standing to seek suppression of the deed.

Appellant bears the burden of showing that he had an expectation of privacy in the travel bag and thus standing to challenge the legality of its search. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). Appellant testified that the bag belonged to him and that he gave it to his traveling companion to carry so that he could carry a larger piece of luggage also belonging to him. In the case of luggage—"a common repository for one's personal effects, and therefore . . . inevitably associated with the expectation of privacy", *Arkansas v. Sanders*, 442 U.S. 753, 762 (1979)—an expectation of privacy can be inferred based on assertion of ownership. *United States v. Goshorn*, 628 F.2d 697, 700 (1980). Nor is the expectation of privacy defeated by giving luggage to a traveling companion to carry. *See United States v. Canada*, 527 F.2d 1374, 1378 (9th Cir. 1975), *cert. denied*, 429 U.S. 867 (1976); *United States v. Lonabaugh*, 494 F.2d 1257, 1262 (5th Cir. 1973).

But the trial judge here did not credit appellant's testimony and concluded that the bag belonged to his companion. We cannot say that the conclusion was clearly erroneous. Fed. R. Civ. P. 52(a). Appellant admitted on cross examination that the travel bag contained personal belongings "such as cosmetics and items of feminine use" belonging to his companion. Though claiming that he also had personal belongings in the bag other than the deed, when asked what they were, appellant could only identify, "Two thousand dollars and a camera belonging to Ms. Ruiz [his traveling companion]." Based on that testimony and on the fact that she was carrying the bag, the trial judge could conclude, as he did, that the bag belonged to appellant's traveling companion and that she was using it at the time to carry her personal belongings.

That does not in itself make an end of the matter. There are circumstances in which the relationship be-

tween the traveling companions, the conditions of the bailment, or the precautions taken to maintain privacy could substantiate an expectation of privacy on the part of a traveler who deposits personal possessions in a companion's traveling bag. *See Rawlings v. Kentucky, supra,* 448 U.S. at 105. But the burden is on appellant to establish such circumstances. He has failed to carry that burden.

Appellant argues further that even if he did not have an expectation of privacy in the travel bag, he had an expectation of privacy in the envelope containing the deed. Testimony showed, however, that appellant had previously shown the envelope to undercover agents indicating that the deed was inside and that the envelope was not sealed. We cannot say under these circumstances that appellant had an expectation of privacy in an unsealed envelope contained in a bag in which he had no expectation of privacy.

III. *Grand Jury Testimony*

After jury selection but before the presentation of any evidence, appellant moved to dismiss the indictment as based on misleading hearsay testimony. Arguing that the grand jury was misled by the testimony of a drug enforcement agent into believing that that agent had eyewitness knowledge of the events about which he testified, appellant contends that that motion should have been granted. He relies on a supervisory rule to that effect announced by the Second Circuit in *United States v. Estepa,* 471 F.2d 1132, 1136-37 (2d Cir. 1972). *Cf. United States v. Cruz,* 478 F.2d 408, 411 (5th Cir.), *cert. denied,* 414 U.S. 910 (1973) (in absence of some showing that integrity of grand jury proceedings has been compromised indictment will not be overturned on appeal).

But even were we to adopt such a supervisory rule, we would find no application in this case. Reviewing the entire testimony of the drug enforcement agent, we simply find no implication that he was giving an eyewit-

ness account. The agent was, in fact, careful to identify by name those agents upon whose eyewitness information his testimony depended.

IV. *Governmental Involvement and Due Process*

Although appellant concedes that a review of the evidence in the light most favorable to the government indicates his predisposition to commit the crime charged and that he may not, therefore, raise the defense of entrapment, *see Hampton v. United States*, 425 U.S. 484, 489-90 (1976); *United States v. Russel*, 411 U.S. 423, 435-36 (1973), he argues that "unreasonable courtship" on the part of government agents violated his right to due process and fundamental fairness under the Fifth Amendment. He points to the fact that his meetings and telephone conversations with government agents which formed the basis of the conspiracy charges against him were instigated by the agents, and argues that such affirmative steps by government agents to bring about an unlawful agreement should bar a conviction for conspiracy.

It is true that the decisions of the Supreme Court have left open the possibility that "outrageous" police involvement in a crime may violate a defendant's right to due process despite his predisposition to commit the crime. *See Hampton, supra*, 425 U.S. at 492-93 (Powell, J., concurring); *see also United States v. Johnson*, 565 F.2d 179, 181 (1st Cir. 1977), *cert. denied*, 434 U.S. 1075 (1978) (interpreting the effect of the multiple opinions in *Hampton*). In taking that position in his concurrence in *Hampton*, Justice Powell emphasized, however, that,

> "[T]he cases, if any, in which proof of predisposition is not dispositive will be rare. Police overinvolvement in crime would have to reach a demonstrable level of outrageousness before it could bar conviction. This would be especially difficult to show with respect to contraband offenses, which are so difficult to detect in the absence of undercover Govern-

ment involvement." *Hampton, supra*, 425 U.S. at 495 n.7.

This is not such a case.[4]

Post-*Hampton* cases finding government involvement so pervasive or outrageous as to violate due process have indeed been rare. We are aware of only one—*United States v. Twigg*, 588 F.2d 373 (3rd Cir. 1978). In that case government agents suggested the establishment of a drug laboratory, provided all necessary equipment and expertise, and ran the operation with some assistance from the defendants. Another court has suggested that an "inactive participant" in a government-instigated scheme, though predisposed, might successfully raise a due process defense. *United States v. Tobias*, 662 F.2d 381, 387 (5th Cir. 1981), *cert. denied*, 102 S. Ct. 2908 (1982).

Here there was ample evidence that appellant actively and eagerly conspired with government agents and others to obtain cocaine with the intention of distributing it. We do not find indicia of government involvement more pervasive or outrageous than that which has passed muster in *Hampton* itself (government both supplied and purchased contraband substance) and subsequent cases. *See, e.g., United States v. Parisi*, 674 F.2d 126 (1st Cir. 1982) (illegal purchase of discount food stamps made from government agents); *United States v. Gray*, 626 F.2d 494 (5th Cir.), *cert. denied*, 449 U.S.

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[4] Appellant, in fact, concedes that this is not a case involving outrageous police conduct, but argues that the involvement of police in the charged crime nonetheless violated his due process rights: "This case is neither one of entrapment nor outrageous police conduct. The unreasonable courtship of the appellant by government agents falls somewhere in between the two recognized defenses." Whatever is meant by "unreasonable courtship", if it does not constitute "police overinvolvement in crime" which "reach[es] a demonstrable level of outrageousness" it will not bar a conviction even in the view of the concurrers in *Hampton*.

1038 (1980) (government agents suggested smuggling scheme to defendants and provided them with repair services, an airstrip and a crew); *United States v. Leja*, 565 F.2d 244 (6th Cir. 1977), *cert. denied*, 434 U.S. 1074 (1978) (government provided necessary chemicals and technical instruction for manufacture of controlled substance); *United States v. Johnson*, *supra* (defendant sold cocaine in response to agents demands and threats persisting over a period of months).

Appellant's conviction is affirmed.

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

United States of America vs.
AMADOR RODRIGUEZ-RAMOS
Defendant

Docket No. Cr. 81-0261

JUDGMENT AND
PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date January 21, 1982.

Counsel: With counsel Michael J. Guinan, Alphonse C. Gonzalez and Scott Kalisch, Esqs.

Plea: Not guilty.

Finding and Judgment: There being a verdict of guilty.

Defendant has been convicted as charged of the offense(s) of knowingly, intentionally and unlawfully, possess with the intent to distribute Cocaine II, Conspiracy. (Count One) (Viol. T. 21, U.S.C., Section 841(a)(1), 846.

Sentence or Probation Order: The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years.

As required by statute, a special parole term of three (3) years is also imposed.

Additional Conditions of Probation: In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Commitment Recommendation: The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Signed by J. R. TORRUELLA
U.S. District Judge

Date: January 21, 1982

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

No. Cr. 81-261

UNITED STATES OF AMERICA,
Appellee,
v.
AMADOR RODRIGUEZ-RAMOS,
Defendant, Appellant.

TRIAL COURT'S DOCKET ENTRIES

DATE	PROCEEDINGS
9-16-81	Indictment, filed. (Ct.1) (Alma Torres-forelady)
9-16-81	Arraign. set upon arrest. Warrant of arrest to be issued. Bond fixed at :Deft. #1: $200,000 cash, #2: $100,000 cash and deft. #3: $100,000 cash. (Mag. Castellanos)
9-17-81	*John Doe:* Warrant of arrest issued and Temp. Comm. issued.
9-17-81	*Rodriguez-Ramos:* Warrant of arrest and Temp. Comm. issued to US Marshal.
9-17-81	*Mercado:* Warrant of Arrest and Temp. Comm. issued to USM.
9-22-81	*Mercado:* Warrant of Arrest ret'd and fld. exec. on 9-22-81.
9-23-81	Govt.'s mot. requesting that indict. be unsealed, fld. *9-25-81* Order: Granted. The Clerk is authorized to unseal the indictment in this case. (J. Cerezo)

DATE	PROCEEDINGS
9-25-81	—*Mercado:* Deft.'s mot. for red. of bail, fld. *Order:* The stip. into by the parties for the red. of bail of deft. is hereby approved by the undersigned. (Mag. Castellanos)
9-25-81	—Appearance of atty. Juan Maldonado as counsel for deft. Mercado, fld.
9-25-81	—*Mercado:* BRAF #1, filed.
9-25-81	—*Mercado:* Appearance Bond in the amt. of $50,000.00 secured by real estate property, filed.
9-25-81	—*Mercado:* BRAF #2, filed and ent'd. (Mag. Castellanos) Usual cs. issued.
9-29-81	—*Mercado:* Temp. Comm. ret'd. and fld. exec. on 9-22-81. Govt.'s mot. in re: trial setting, fld.
10- 1-81	—*Mercado:* Deft. arraigned. PONG ent'd. as to only ct. OR cont. (Mag. Cast.)
10- 9-81	—*Rodriguez, Mercado & Doe:* Order that case is set for S/C on 11-2-81 at 1:30 PM before J. CC, fld.
10-14-81	—*Rodriguez, Amador:* Letter enclosing docs. pertaining to and ent'd. Mag.'s proceedings, w/att/c of docket, of the order of removal, appearance bond for $100,000 cash, rec'd. from the SD of Fla., fld.
10-23-81	—*Rodriguez:* Case set for Oct. 29/81 at 9:30 AM for arr. before Mag. Simonpietri. (Clerk) s/c AUSA, USM, deft. s/c M. Guinan w/copy of indictment.
10-28-81	—*Rodriguez:* Deft.'s mot. for continuance of arraignment, fld.
10-28-81	—*Rodriguez:* Mot. of atty. Scott Kalisch as counsel for deft., fld. *10-30-81* Noted. (Mag. Simonpietri) s/c: Kalisch and AUSA.
10-30-81	—Order at margin of Mot. #15: Since deft. does not need his state side counsel for arraign. and could have today requested until Nov. 10, 1981 to meet w/ the Govt.'s counsel and 10 days thereafter to file motions, this mot. is

DATE	PROCEEDINGS
	granted subject to the following conditions: that deft. will be arraigned on 11-10-81 at 9:30 AM before the undersigned; that deft.'s counsel are to complete all informal discovery conferences with counsel for the Govt. by 11-10-81; and that deft. will be granted until Nov. 23 to file all necessary motions. Counsel Kalisch is hereby ordered to appear at the S/C set by J. Cerezo for 11-2-81. (Mag. Simonpietri) s/c: Kalisch and AUSA.
11-10-81—	*Rodriguez:* Deft. arraigned. PONG ent'd as to all counts. Deft. remains on bond. (Mag. Simonpietri)
11-10-81—	*Rodriguez:* Arraign. held. Govmt.'s counsel informed the ct. that the pretrial has been set for 11-30-81 at 1:30 P.M. and the Trial for 11-08-81. Deft. was ordered as part of his conditions of release not to leave the State of Illinois except to travel to P.R. in ct. related bus. or in matters related to this case and to turn in any passport he may possess. He under oath declared he has never been issued one. Deft.'s counsel Michel Guinan and Alfonso Gonzalez were gtd. 48 hrs. to file their appearances and one additional day to meet with U.S. Attys. Counsel for defts. expressed that May tapes need to be transcribed and examined, for which reason the time to file mots. given in the Order of 10-29-81 should be extended. They were instructed to see that counsel for the govmt take efforts for a prompt transcription and to file, if necessary a written mot. addressed to J. Cerezo. (mag. Simonpietri) s/cs to AUSA.
11-12-81—	*Rodriguez:* Counsel for deft. Michael J. Guinan and Alphonse Gonzalez's notice of appearance, filed.

DATE	PROCEEDINGS
11-12-81—	*Rodriguez:* Deft.'s mot. to continue trial date, filed.
11-17-81—	*Rodriguez:* Temp. commitment ret'd. and fld. unexecuted.
11-23-81—	*Rodriguez:* Order at foot of mot. #20: Granted. The prior setting of this case conflicts with two other criminal cases set for 11-9-81 and 12-10-81 before the undersigned. Cr. Nos. 81-272 and 81-279. Trial date in this case is reset for 11-21-81 at 8:30 AM Pretrial shall be held as scheduled. (J. Cerezo) s/cs to AUSA S. Kalisch, J. Maldonado, M.J. Guinan, and A. Gonzalez on 11-25-81
11-25-81—	*Rodriguez:* Status Conference held on 11-2-81. Statements of counsel heard on discovery and pretrial set for 11-30-81 at 1:30 PM and the trial for 12-8-81 at 8:30 AM. Parties notified. (J. Cerezo)
11-30-81—	*Mercado:* Defts. informative motion, filed.
12- 2-81—	*Pretrial Memo* that at P.T. held on 11-30-81, full discov. has been made to defts., trial has been rescheduled to 12-21-81 at 8:30 AM fld. and ent'd. (J. Cerezo) s/cs to AUSA, Kalisch, Guinan, Gonzalez, Maldonado.
12- 4-81—	*Order* transferring case to J. Torruella, fld. and ent'd. (J. Cerezo s/cs to AUSA, S. Kalisch, M. J. Guinan, A. Gonzalez, and J. Maldonado Torres.
12- 4-81—	Case is reset for trial for 12-14-81 before J. Torruella at 9:00 AM. s/cs to AUSA, S. Kalisch, M. J. Guinan, A. Gonzalez, and J. Maldonado Torres, and deft.
12- 8-81—	Deft.'s mot. to modify trial date, filed.
12-10-81—	Deft.'s mot. for continuance, with affidavit in support thereof, filed.
12-10-81—	Deft.'s mot. for severance, filed.
12-10-81—	Deft.'s mot. to quash w/a & supp. of evidence, filed.

DATE	PROCEEDINGS
12-10-81	Deft.'s mot. to dismiss, filed.
12-10-81	Order at foot of mot. #27: Denied. This is a criminal case in which the speed Trial Act date is about to expire and thus take precedence over all matters. Counting that at least one of deft.'s multiple counsel are available for trial on 12-14-81 that trial setting stands firm. (J. Torruella) s/cs S. Kalisch, M. J. Guinan, A. Gonzalez, J. Maldonado Torres, on 12-22-81 Previously counsel notified orally by Ct. in open ct.
12-10-81	Order at foot of mot. #30: Denied. (J. Torruella) s/cs to USA, Kalisch, Guinan, Gonzalez, and Maldonado on 12-22-81. Counsel also notified personally by ct. orally.
12-11-81	Govt.'s oppos. to deft.'s motions, filed.
12-14-81	Order at foot of mot. #29: Denied. (J. Torruella) s/cs to USA., Kalisch, Guinan, Gonzalez, and Maldonado on 12-22-81. Counsel notified personally by ct.
12-14-81	Deft.'s mot. for severance of defts., filed. 12-14-81 Denied. (J. Torruella) s/cs to USA., Gonzalez, Guinan, and Kalisch on 12-22-81. Counsel notified personally orally by ct.
12-14-81	*Rodriguez:* Deft.'s mot. to cont. trial until 01-18-82, filed with affidavit in support thereof.
12-14-81	*Rodriguez:* Deft.'s mot. to dismiss indict., filed.
12-14-81	*Rodriguez:* Deft.'s mot. to dismiss indict., filed.
12-14-81	*Rodriguez:* Deft.'s mot. to quash arrest & suppress evidence, filed.
12-14-81	*Rodriguez:* Deft.'s mot. to suppress statements, fld.
12-14-81	*Rodriguez:* Deft.'s mot. to suppress tapes for lack of authentication and foundation, filed.
12-14-81	*Rodriguez:* Deft.'s mot. to suppress tape recorded conversations & any transcripts which might be made of said conversations due to their unreliability, filed.

DATE	PROCEEDINGS
12-14-81	*Rodriguez:* Deft.'s mot. in limine for order prohibiting introduction and admission of co-conspirator hearsay statements into evidence, filed.
12-14-81	*Rodriguez:* Deft.'s mot. for discovery, filed.
12-14-81	*Rodriguez:* Jury trial cont. to 12-15-81. Hrg. on various motions called, etc. 1) motion for cont.—court makes findings for record and revokes bail of deft. until such time as trial starts. Deft. moves for reconsideration. Ct. leaves matter pend. 2) Three mots. to dismiss—Ct. inquires from deft. as to matter of representation. Deft. agrees to having Atty. Gonzalez represent him in the arguing of mots. until Mr. Guinan is here. Both mots. for severance are denied. 3) Mot. to Quash Arrest and Suppress Evidence is denied. 4) Mot. for discovery is tardy. 5) Mot. to Suppress Statements denied. 6) Mot. to quash Arrest and suppr. evidence is left pending until such time as at trial deft. presents evidence if he wishes to do so. 7) Mot. to Suppress Tapes, etc., denied. 8) mot. to suppress tape, etc., considered premature. 9) Mot. in limine—denied. 10) Three mots. to dismiss denied. Ct. grants reconsideration on matter of revocation of bail. (J. Torruella).
12-15-81	Jury instructions, filed.
12-15-81	*Mercado:* Counsel for deft. appears for a COP. Plea bargaining stated for record. Deft. denies govt.'s evidence Ct. states it cannot accept Guilty Plea of deft. and that deft. will go to trial with other deft. this afternoon at 2:00 PM. (J. Torruella)
12-15-81	Two jury notes, filed.
12-15-81	Jury list, filed.
12-15-81	*Rodriguez & Mercado:* Jury duly impaneled. Prel. instr. given by Ct. to jury. Opening statements by counsel heard. Trial adj. until 12-16-81 at 9:00 AM. (J. Torruella)

DATE	PROCEEDINGS
12-16-81—	*Rodriguez & Mercado (Bond):* Case called for further jury trial. Counsel for deft. is granted leave to file written mot. Testimony for govt. hrd. Trial adj. to 12-17-81 at 9:00 AM. (J. Torruella)
12-16-81—	Govt.'s exhs. 2a, 2b, 3, 3a, 1, and 4, filed.
12-17-81—	*Rodriguez & Mercado:* Case called out of hrng of jury Mot./Dismiss, Memo of Law in Support of deft.'s Mot. to Quash Arrest, etc., Mot. to Dismiss Indict. & Discharge Deft., Ct. states are tardy. Stip of parties is accepted. Id. 8 is marked exh. 8. Ct. makes findings for record after parties submit matter of suppression and finds that deft. does not have standing to seek suppression of document. Id. 9 for govt. is marked as exh. 9. Trial adj. to 12-18-81 at 10:00 AM. (J. Torruella).
12-17-81—	*Rodriguez & Mercado:* Govt.'s exhs. 5, 6, 7, 8, 4a, 5a, 6a, 7, and 9, filed.
12-17-81—	*Rodriguez & Mercado:* Proposed jury instructions, fld.
12-17-81—	*Rodriguez:* Deft.'s mot. to dismiss indict., with memo in support thereof, filed.
12-17-81—	*Rodriguez:* Govt.'s answ. to deft.'s mot. for dismissal filed.
12-17-81—	*Rodriguez:* Memo of Law in support of deft.'s mot. to quash arrest and suppress evidence, filed.
12-17-81—	*Rodriguez:* Deft.'s mot. to dismiss indict. & discharge deft. fld. *12-17-81* Denied. (J. Torruella) s/cs to AUSA, Guinan, Kalisch, and Gonzalez.
12-18-81—	*Rodriguez:* Transcript of Ct. reporter of testimony of Alan J. Bachelier dated 09-16-81, fld.
12-18-81—	*Rodriguez & Mercado:* Case called for trial out of hrg. of jury. Ct. rules denying deft. Rodriguez's motion to Dism. Ct. also makes findings for record re; Petrozziello findings.

DATE	PROCEEDINGS
	to the effect that Govt. has established existence of conspiracy, incl. all three defts. Rodriguez, Mercado & Israel aka John Doe. Defts. mots. u. R.29 previously made at bench are denied. Jury comes into courtroom. Closing arguments of counsel heard. Jury gives "guilty" as charged as to deft. Mercado. Verdicts are read outloud at request of counsel for deft. Rodriguez, jury is polled and all answer in the affirmative. Verdicts are ordered to be filed. Govt. req. that bond for deft. Rodriguez be raised to $10,000. cash. Deft. gtd. until Mon. 12-21-81 at 5:00 PM to post same. He is to report twice to Marshal in manner satisfying to Marshal. Deft. is prohibited to enter any airport or its premises or any place where he can leave the jurisdiction of P.R. incl. marinas or docks until he posts bond on Mon. (J. Torruella)
12-18-81—	Nine jury notes, filed.
12-19-81—	Three jury notes, filed.
12-19-81—	*Rodriguez:* Guilty verdict, as charged, filed.
12-19-81—	*Mercado:* Not guilty verdict, filed.
12-21-81—	*Rodriguez:* ORDER that the sentencing of deft. Rodriguez is set for 01-21-82 at 9:00 AM. U.S. P/O shall prepare the corresponding pre-sentencing report, filed and entered. (J. Torruella) s/cs to AUSA, Kalisch, Guinan, Gonzalez, Deft., and U.S. Prob. on 12-21-81.
12-19-81—	*Mercado:* JUDGMENT OF DISCHARGE as to deft. Mercado, fld.
12-21-81—	Usual att. copies issued. Bond for $150,000. (100,000 dep. in Fla.)
12-28-81—	*Rodriguez:* Deft.'s mot. for new trial and judgment notwithstanding the verdict, filed. *12-31-81* This motion is denied for failure to comply in local R. 8(E), and or the merits. (J. Torruella) s/cs to AUSA. Guinan, on 12-31-81.

DATE PROCEEDINGS

1- 7-82—*Mercado:* Deft.'s mot. for return of bonds, fld. *1-8-82* Granted. (J. Torruella) s/cs to AUSA, Mercado on 1-11-81.

1-13-82—*Rodriguez:* Deft.'s mot. for ext. of time for memo to be considered in support of deft.'s mots., fld.

1-13-82—Memo in support of deft.'s mot. for new trial & judgm, fld.

1-15-82—Order at foot of Memo: Denied. (J. Torruella s/cs to AUSA & Kalisch.

1-15-82—*Rodriguez:* order at foot of mot. #65: Granted (J. Torruella) s/cs to Kalisch and AUSA.

1-18-82—*Rodriguez:* Letter from the Southern Dist. of Florida dated 1-5-82 forwarding copy of the Appearance Bond for the amt. of $100,000. plus the interest earned in the amt. of $1,453.81. Said amounts were received in cash in our court.

1-19-82—*Rodriguez:* ORDER that cash bail of the deft. in the amt. $101,453.81 received from the Southern Dist. of Florida is to be deposited in the registry account of Clerk's office of this Ct., filed and entd. (J. Torruella)

1-19-82—*Rodriguez:* Receipt #16044 for the amt. of $101,453.81 deposited as cash bail by AMADOR RODRIGUEZ.

1-21-82—*Rodriguez:* Case called for sent. and same is imposed. Deft. is present in ct. and assisted by counsel and Court interpreter. Bond on appeal is set at $250,000.00 cash and whatever he has now will be credited to the total amt. Ct. grants deft. until Mon. at noon time to post bail and instructs him to report personally twice a day to the marshal. Ct. instructs deft. to make arrangements with the Marshal's office so as to comply w. reporting twice daily, by having him report to someone at Arecibo etc. Deft. is also instructed by Ct. not to change his place of residence in

DATE	PROCEEDINGS
	PR w/o prior obtaining Ct.'s permission; not to enter any airport for whatever reason or any place where he can take a ship leaving PR; if he has any passport he should surrender it immediately to the Marshal's Office. (J. Torruella) s/cs to U.S. Marshal. Masini and Sarita.
1-21-82—	*Sentence:* Count 1: impris. for 10 yrs. & SPT 3 yrs. (J. Torruella) Usual A
1-25-82—	*Rodriguez:* Deft.'s mot. for ext. of time to post cash bail, filed.
1-25-82—	Footnote order on copy of above mot.: Granted. (J. Torruella) s/cs to AUSA and S. Kalisch.
1-25-82—	Mot. of petitioner Porfirio Torres for return of bond, filed.
1-25-82—	Mot. of petitioner Ana Iris Mercado Rivera for return of bond, filed.
1-25-82—	Mot. of petitioner Angel del C. Mercado Torres & Elidia Torres Lucena for return of bond, filed.
1-26-82—	*Rodriguez:* Appearance bond for the amt. of $250,000.
1-26-82—	*Rodriguez:* ORDER that if deft. having posted bail on appeal he is to comply with the following: 1) if deft. chooses to leave the jurisdiction of this Ct. in order to go to his home in Chicago, Ill., he is to inform this Ct. and the Marshal's Office the date and the carrier by which he will travel, as well as the address at which he will be while there. 2) Deft. is to surrender his passport; 3) Deft. is to report twice a week to the USM Office in Chicago, until further order of this Ct. 4) That deft. is to provide the USM's Office in Chicago w. the address at which he will be staying in Chicago and any further changes of address are also to be notified to said Marshal's Office and to this Ct. *before* they take place, Filed and ent'd. (J. Torruella) s/cs to AUSA, Kalish, Deft., and USM, and Sarita.

DATE	PROCEEDINGS
1-26-82—	*Rodriguez:* The sent. imposed to deft. in this case is hereby amended nunc pro tunc to vacate the SPT of 3 yrs., fld. and ent'd. (J. Torruella) att. s/cs to US PROB., USM., Chief of Police AUSA, and Kalisch.
1-26-82—	Govt.'s mot. req. a "Nebbia" hrg., with memo in support thereof, filed. *1-27-82* Hearing is set for 2-5-82 at 9:00 AM. (J. Torruella) s/cs AUSA, M. J. Guinan, Kalisch, Mr. Amador Rodriguez Ramos, and U.S. P/O.
1-29-82—	*Rodriguez:* Deft.'s Notice of appeal of judgment ent'd. on 1-21-82, filed. Filing fees and docket fees pending 1 s/c Appeals Clerk, 1 s/c Clerk, 1 transcript/c of order to attys.
2- 1-82—	*Rodriguez:* Deft.'s notice of filing notice of appeal filed.
2- 1-82—	*Rodriguez:* Deft.'s notice of appeal of judgmt. ent'd on 1-21-82, filed. s/c to appeals Clerk, Clerk, and Staff atty. Filing fees and docket fees pending. Docket fees pd. on 3-3-82.
2- 1-82—	*Rodriguez:* Description of parts of transcript appellant intends to include in the record and statement of the issues he intends to present on appeal, filed.
2- 4-82—	*Rodriguez:* Deft.'s mot. for ext. of time for the Nebbia hrg. until 2-10-82, filed.
2- 4-82—	Order at foot of mot. #70: Granted. (J. Torruella) s/cs to AUSA, Porfirio Torres and Mrs. Generosa Santiago on 2-5-82.
2- 4-82—	Order at foot of mot. #71: Granted. (J. Torruella) s/cs to AUSA and ANA Iris Mercado on 2-5-82.
2- 4-82—	Order at foot of mot. #72: Granted. (J. Torruella s/cs to AUSA, Angel del C. Mercado and Elidia Torres Lucena on 2-5-82.
2- 5-82—	Hearing called on Govt.'s mot. for Nebbia hrg. Mot. for ext. filed by deft. is w/drawn. Stats. for record made. Ct. states there is nothing further to do at this time. (J. Torruella)

DATE	PROCEEDINGS
3- 3-82	—Order ent'd by CCA on 2-23-82 enlarging time to pay the $65.00 docket fee including 3-5-82, filed and ent'd. s/cs to Alfaro; Masini, Staff Atty., and appeals clerk.
3-10-82	—Record on appeal mailed to CCA on 3-10-82.
3-30-82	—Transcript of ct. reporter of jury trial held on 12-15-81, filed.
4-21-82	—Transcript of ct. reporter of 2nd. day of jury trial held on 12-16-81, at 9:00 AM. filed.
4-21-82	—Transcript of ct. reporter of 3rd day of jury trial held on 12-17-82, filed.
4-21-82	—Transcript of ct. reporter of 4th day of jury trial held on 12-18-82, filed.
4-26-82	—*Rodriguez:* Supplemental record on appeal mailed to CCA on 4-26-82.
1-26-83	—*Transcript* of Ct. reporter on Hearing on Govt.'s mot. Req. a Neba.